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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,006	12/11/2006	Heiner Sann	08146.0014U1	9311
23859	7590	03/31/2009		
Ballard Spahr Andrews & Ingersoll, LLP SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			EXAMINER FAYYAZ, NASHIMIYA SAQIB	
			ART UNIT 2856	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/586,006

**Applicant(s)**

SANN ET AL.

**Examiner**

Nashmiya S. Fayyaz

**Art Unit**

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/02)
- Paper No(s)/Mail Date 12/11/06.
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-11, 13, 14, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen-US Patent # 4,046,011. As to claims 1 and 18, as best understood, Olsen discloses a one-way valve for a fluid sampler device and associated operational method including an element (valve 50) arranged within a sample probe(one-way member 16), supply line (tube 12), discharge line (outlet tube 14), see figs. 1-4 and col. 2, lines 65 et seq. Further, it is noted that a first container is not described by Olsen. However, there is a depiction of a

liquid L and no description of what liquid is being collected. It is old and well-known that liquid is contained in a container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have collected the liquid sample from a container based on the type of sample being collected since collecting from a sample container is old and well-known. As to claim 2, note that tube 40 is connected to a pneumatic pulse relay 20 for provision of air (gas) and outlet tube 14 supplies to a sample container, see col. 4, lines 36-44. As to claim 3, the valve 50 appears to be between the 2 tubes. As to claims 4 and 5, note col. 3, lines 44 et seq describing the conveyance. As to claim 6, usage of a pump or negative pressure device is not described by Olsen. However, usage of a pump as an alternative to the pneumatic pulse relay is known for the purpose of fluid displacement. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included a pump for the purpose of fluid displacement as an alternative to the pneumatic pulse relay as a matter of design choice. As to claim 7, note the depiction of the tubes 12 and 14 which are made from stainless steel which can be considered sheathing allowing temperature control since there is at least some degree of temperature control due to the stainless steel construction. As to claim 8, note that the air circulated within the tubes can be considered a heating or cooling device as it affects the temperature of the tubes. As to claim 9, note first gas conveying line (tube 13). As to claim 10, note valve 22 and valve 34. As

to claim 11, the pneumatic pulse relay is pressure controlled and therefore needle valve 22 can be considered a pressure sensor. As to claims 13 and 19, note the air from relay 20 acts to clean and seal, see col. 4, lines 29-44 such that the air can be the rinsing fluid. As to claim 20, note that the device is for repetitive sampling.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen in view of Bernardin-US Patent # 4,585,060. As to claim 12, Olsen lacks a teaching for a filter in the gas line. In a related prior art device, Bernardin teaches a similar fluid sampling apparatus including valve 68 at inlet 22 for sampling fluid via a gas controller apparatus 50 which further includes filter 132, note fig. 3. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included such a filter into the device of Olsen for the obvious purpose of maintaining a clean line free of debris.

5. Claims 1, 9 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tohge et al-US Patent # 5,245,318. As to claim 1, as best understood, Tohge et al disclose a particle analyzing apparatus including first container (container 6), element ( valve 14) within sample probe (sample tube 13) inputting to flow cell 12, supply line (unnumbered tube next to tube 13) for conveying compressed gas and medium sa, see fig. 1 and col. 2, lines 37 et seq. Further, it is noted that Tohge et al do not specifically recite a negative pressure. However, it is noted that usage of negative pressure is merely found in the

preamble as an intended usage clause. Therefore, since Tohge et al. has pressure control means, it would have been obvious to one of ordinary skill in the art at the time of the invention to have recognized that the Tohge et al device could be used for creating a negative pressure in order to move fluids through the fluid system as a matter of design choice. As to claim 9, note the lines on either side of regulator 4 and compressor 1. As to claim 13, note rinsing (sheath fluid Sh). As to claims 14-15, note second connecting line (sheath tube 7) from container 5. As to claims 16 and 17, as best understood, note gas supply connection (air 18), lines (to regulator 3) and filter 8.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, on line 2, the reference to "and/or tubes" is unclear since it is not equivalent to a container. Further, the reference on line 2 to "in particular" is unclear since it include a broad limitation followed by a narrow limitation such that the scope of the claim cannot be determined. On line 3, is the element a "non-return valve" or does it just act like one? On line 4, "the sample" lacks antecedent basis. On line 7, "the

first container" lacks clear antecedent basis. In claim 3, it is unclear what "a line arrangement" means. In claim 4, on line 3, "they" is unclear. In claim 5, on line 2, "it" is unclear. In claim 13, on line 2, "they" is unclear. In claims 16 and 17, each instance of "the third container" lacks antecedent basis. In claim 18, on line 2, the reference to "and/or tubes" is unclear since it is not equivalent to a container. Further, the reference on line 2 to "in particular" is unclear since it include a broad limitation followed by a narrow limitation such that the scope of the claim cannot be determined. On lines 16 and 18, etc, "the container" lacks clear antecedent basis. Also, all instances of "the sample" such as line 24 lacks clear antecedent basis. In claim 19, on line 3-4, "the sample" lacks clear antecedent basis.

### ***Drawings***

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the heating or cooling device must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not

be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashmiya S. Fayyaz whose telephone number is 571-272-2192. The examiner can normally be reached on Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. S. F./  
Examiner, Art Unit 2856  
/Hezron Williams/  
Supervisory Patent Examiner, Art Unit 2856